

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1.

<u>Sections Affected</u> R20-5-627	<u>Rulemaking Action</u> Amend
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Cathy Neville, Assistant Director
Address: Industrial Commission of Arizona
Division of Occupational Safety and Health
800 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
4. An explanation of the rule, including the agency's reasons for initiating the rule:
The proposed rule amendment will enable the Division to conform to the adoption of a Federal Occupational Safety and Health rule published in the *Federal Register* of March 31, 1997, requiring those employers who have received a citation(s) for violation(s) of the Occupational Safety and Health Act to certify that they have abated the hazardous condition for which they were cited and to inform affected employees of the abatement action taken by their employers. The abatement procedures a specific employer must follow depend on the nature of the violation(s) identified and the employer's abatement actions. If abatement occurs during or immediately after the inspection that identified the violation(s), the employer is not required to submit an abatement certification letter to the Division. If the violation(s) is a non-serious violation, or a serious violation that does not require additional documentation, the employer is required to certify abatement using a simple one-page form or equivalent. In cases involving the most serious violations, additional documentation is required. The proposed rule codifies, simplifies, and streamlines the abatement certification procedures that the Division has previously administered administratively. The Division feels that this abatement verification rule will reduce employers' paperwork, enhance employee participation in the abatement process, increase the number of cited hazards that are quickly abated, and streamline and standardize the Division's abatement procedures.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
6. The preliminary summary of the economic, small business and consumer impact:
The Federal Occupational Safety and Health Administration has determined that these amendments will reduce the costs that cited employers currently incur to verify abatement. This conclusion is based primarily on the fact that the final rule will only affect those employers who are actually cited for violations and on evidence that most of these cited employers already supply Federal and State-plan enforcement agencies with more information than will be required under the new rule. Overall, the cost of

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compliance for employers to verify abatement is estimated to be 50% less per year than employers are currently incurring to comply with the administrative procedures for abatement verification. Other benefits of the final regulation include enhanced worker protection because hazards will be abated more quickly. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 West Washington Street, Phoenix, Arizona 85007.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cathy Neville, Assistant Director
Address: Industrial Commission of Arizona
Division of Occupational Safety and Health
800 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding has been scheduled as follows:

Date: March 19, 1998
Time: 9:30 a.m.
Location: Industrial Commission of Arizona
Third Floor Conference Room
800 West Washington Street
Phoenix, Arizona 85007

Written comments may be submitted on or before 9:30 a.m., March 19, 1998.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
Not applicable.

11. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section
R20-5-627. Reserved Abatement Verification

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS

R20-5-627. Reserved Abatement Verification

A. Scope and application.

This Section applies to employers who receive a citation for a violation of the Arizona Occupational Safety and Health Act.

B. Definitions:

1. Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by the Division during an inspection.

2. Abatement date means:

- a. For an uncontested citation item, the later of:
 - i. The date in the citation for abatement of the violation;
 - ii. The date approved by the Division or established in litigation as a result of a petition for modification of the abatement date (PMA); or

iii. The date established in a citation by an informal conference agreement.

b. For a contested citation item for which the Administrative Law Judge Division has issued a final decision affirming the violation, the later of:

i. The date identified in the final decision for abatement; or

ii. The date computed by adding the period allowed in the citation for abatement to the final decision date;

iii. The date established by a formal settlement agreement.

3. Affected employee means an employee who is exposed to the hazard identified as a violation in a citation.

4. Final order date means:

a. The date on which an uncontested citation is deemed final under A.R.S. § 23-417(A);

b. For a contested citation item:

i. The date on which a decision or order of an administrative law judge becomes final under A.R.S. §23-421 or §23-423.

5. Movable equipment means a hand-held or non-hand-held machine or device, powered or unpowered, that is

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used to do work and is moved within or between work-sites.

C. Abatement Certification.

1. Within 10 calendar days after the abatement date, an employer must certify to the Division that the employer has abated each cited violation except as provided in subsection (C)(2).
2. An employer is not required to certify abatement if a Compliance Officer, during an on-site portion of an inspection:
 - a. Observes, within 24 hours after a violation is identified, that abatement has occurred; and
 - b. Notes the abatement action on the citation.
3. An employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (H), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

D. Abatement documentation.

1. An employer must submit to the Division, along with the information on abatement certification required by subsection (C)(3), documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the Commission indicates in the citation that such abatement documentation is required.
2. Documents demonstrating that abatement is complete may include evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

E. Abatement Plans.

1. The Commission may require an employer to submit an abatement plan (see Appendix B for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.
2. An employer shall submit an abatement plan for each cited violation within 25 calendar days from the date of a final order when the citation states that a plan is required. In the abatement plan the employer must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how the employer will protect employees from exposure to the violative condition in the interim until abatement is complete.

F. Progress reports.

1. The Commission may request an employer who is required to submit an abatement plan to also submit periodic progress reports for each cited violation. If the Commission requires a periodic progress report, the Commission shall include the following information on a citation issued to an employer:
 - a. That periodic progress reports are required and the citation items for which they are required;
 - b. The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;
 - c. Whether additional progress reports are required; and
 - d. The date(s) on which additional progress reports must be submitted.

2. For each violation, the progress reports must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

G. Employee notification.

1. An employer shall inform affected employees and the employees' representatives about abatement activities covered by this Section by posting a copy of each document submitted to the Division, or a summary of the document, near the place where the violation occurred.
2. Where the posting described in Subsection (G)(1) does not effectively inform employees and the employees' representatives about abatement activities (for example, for employers who have mobile work operations), the employer shall:
 - a. Post each document or a summary of the document in a location where it will be readily seen by affected employees and the employees' representatives; or
 - b. Take other steps to communicate fully to affected employees and the employees' representatives about abatement activities.
3. The employer shall inform employees and their representatives of the employees and the employees' representatives' right to examine and copy all abatement documents submitted to the Division.
 - a. An employee or an employee representative shall submit a request to examine and copy abatement documents within 3 working days of receiving notice that the documents have been submitted.
 - b. An employer shall comply with an employee's or employee representative's request to examine and copy abatement documents within 5 working days of receiving the request.
4. An employer shall ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the Division and that abatement documents are:
 - a. Not altered, defaced, or covered by other material; and
 - b. Remain posted for 3 working days after submission to the Division.

H. Transmitting abatement documents.

1. An employer shall include, in each submission required by this Section, the following information:
 - a. The employer's name and address;
 - b. The inspection number to which the submission relates;
 - c. The citation and item numbers to which the submission relates;
 - d. A statement that the information submitted is accurate; and
 - e. The signature of the employer or the employer's authorized representative.
2. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Division receives the document is the date of submission.

I. Movable Equipment.

1. For serious, repeat, and willful violations involving movable equipment, an employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.
Note: The Division shall deem attaching a copy of the citation to the equipment to meet the tagging require-

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ment of Subsection (I.1.) and the posting requirement of R20-5-623.

2. The employer shall use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

Note: An employer is permitted to use the tag found in Appendix C of this Section to meet this requirement.

3. If a violation has not been abated, an employer shall attach a warning tag or a copy of the citation shall be attached to the equipment as follows:

- a. For hand-held equipment, the employer shall attach a warning tag or copy of the citation immediately after the employer receives the citation; and
b. For non-hand-held equipment, the employer shall attach a warning tag or copy of the citation prior to moving the equipment within or between work-sites.

4. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the Division to meet the requirements of this Section when the information required by Subsection (I)(2) is included on the tag.

5. An employer shall assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

6. An employer shall assure that the tag or copy of the citation attached to movable equipment remains attached until the following occurs:

- a. The employer has abated the violation and all abatement verification documents required by this Section have been submitted to the Division;
b. The employer has permanently removed the cited equipment from service or the cited equipment is no longer within the employer's control; or
c. The Division, Administrative Law Judge Division, or Review Board vacates the citation.

Appendices to R20-5-627-Abatement Verification

Note: Appendices A through C provide information and non-mandatory guidelines to assist employers and employees in complying with the appropriate requirements of this Section.

Appendix A to Section R20-5-627-Sample Abatement-Certification Letter (Nonmandatory)

[Name], Director
The Industrial Commission of Arizona
Division of Occupational Safety and Health
P. O. Box 19070
Phoenix, Arizona 85005

[Company's Name]
[Company's Address]

The hazard referenced in Inspection Number [Insert 9-digit #] for violation identified as:
Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

I attest that the information contained in this document is accurate.

Signature

Typed or Printed Name

Appendix B to Section R20-5-627-Sample Abatement Plan or Progress Report (Nonmandatory)

(Name), Director
The Industrial Commission of Arizona
Division of Occupational Safety and Health
P. O. Box 19070
Phoenix, Arizona 85005

[Company's Name]
[Company's Address]

Check one:
Abatement Plan []
Progress Report []

Inspection Number _____

Page _____ of _____

Citation Number(s)* _____

Item Number(s)* _____

Action	Proposed	Completion
	Completion	Date (for
	Date (for	abatement
	plans only)	progress reports
		only)
1.
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2.
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3.
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4.
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5.
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Date required for final abatement:

I attest that the information contained in this document
is accurate.

Signature

Typed or Printed Name

Name of primary point of contact for questions: (optional)

Telephone number: _____

*Abatement plans or progress reports for more than one
citation item may be combined in a single abatement
plan or progress report if the abatement actions, pro-
posed completion dates, and actual completion dates
(for progress reports only) are the same for each of the
citation items.

Appendix C to Section R20-5-627--Sample Warning Tag
(Nonmandatory)

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WARNING:

EQUIPMENT HAZARD BY ADOSH

EQUIPMENT CITED:

HAZARD CITED:

FOR DETAILED INFORMATION
SEE ADOSH CITATION POSTED AT:

BACKGROUND COLOR--ORANGE
MESSAGE COLOR--BLACK